IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 322 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI
and
Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAISINGBHAI BACHUBHAI PARMAR

Versus

THE STATE OF GUJARAT

Appearance:
MR G. RAMAKRISHNAN, for Appellant
MS GAJJAR, APP, for Respondent No. 1

CORAM : MR.JUSTICE M.H.KADRI
and
MR.JUSTICE A.L.DAVE

Date of decision: 20/10/2000

ORAL JUDGEMENT

(Per : MR.JUSTICE A.L.DAVE)

1. This criminal appeal arises out of a judgment and order rendered in Sessions Case No.132 of 1989 on 3.2.1992 by learned Additional Sessions Judge, Nadiad, convicting the present appellant-original accused for the offences punishable under Section 302 and 447 of Indian Penal Code and sentencing him with rigorous imprisonment for life and fine of Rs.2000/- and rigorous imprisonment for three months and fine of Rs.100/- for the offences respectively.

2. The facts of the case, in a nut-shell can be narrated thus:-

2.1 The appellant-accused, Raisingbhai Bachubhai Parmar, is alleged to have committed two murders, one of Shanabhai Babubhai and the other of Gordhanbhai Babubhai. It is the case of the prosecution that on 3.9.1988, at about 14.30 hours, deceased Shanabhai Babubhai and Gordhanbhai Babubhai were in their fields along with Jeshbhai Shankerbhai Parmar, attending to agricultural work. It was a 'Janmashtami' day. The accused went there and had a brief talk with them. After enjoying beedi with them, he requested the deceased Shanabhai to accompany him to the neighbouring field for mending the water reservoir near the well in that field. Deceased-Shanabhai, therefore, accompanied him. It is the case of the prosecution that, after some time, the accused came back and demanded a match box from Gordhanbhai. Gordhanbhai asked him to look for the match box at the place where they had earlier sat to enjoy beedi. Around that time, Jeshbhai Shankerbhai, who claims to be an eye-witness, heard a 'Thud' sound whereupon he looked behind to find deceased-Gordhan lying injured and the accused standing there with a spade. Gordhanbhai was bleeding from his head. Witness-Jeshbhai, therefore, raised shouts. On hearing his shouts, accused threatened witness-Jeshbhai. Therefore, Jeshbhai started running. Around that time, Babubhai Motibhai and Shanabhai Lallubhai came to him. Witness-Jeshbhai narrated the story about Raising, i.e. the accused, having assaulted deceased-Gordhan with a spade. The accused, therefore, ran away. Deceased-Gordhanbhai was, therefore, immediately shifted to hospital, where he succumbed to the injuries during the course of treatment. Subsequently, dead body of Shanabhai Babubhai was found near the well in the field where Shanabhai was taken by the accused. On basis of the F.I.R. registered, the Police registered the offence, investigated the case and found sufficient evidence to charge the accused with murder of Shanabhai as well as Gordhanbhai and, therefore, filed a charge

sheet against him for the two murders. Since the accused was exclusively triable by the Court of Sessions, the learned Judicial Magistrate, Petlad committed the case to the Court of Sessions, at Nadiad. When the case came up for hearing, charge was framed against the accused at Ex.2 for murder of Shanabhai Babubhai and Gordhanbhai Babubhai by committing trespass. The accused pleaded not guilty to the offence. He had engaged his own lawyer and faced the trial. Upon considering the evidence led by the prosecution and contentions raised by both the sides, the learned Additional Sessions Judge, Kheda, at Nadiad, found that the prosecution had proved the charges against the accused and convicted him for the offence as stated above. It is this judgment and order that is the subject matter of challenge in this appeal.

2.2 The accused was originally represented by Ms. R.V. Acharya and then at the hearing was represented by Mr. G. Ramakrishnan. Mr. Ramakrishnan contended that the entire case hangs on deposition of Jeshbhai Shanabhai, who is the only eye-witness to the incident. Witnesses-Babubhai Motibhai, Shanabhai Lallubhai and Revaben Gordhanbhai cannot be considered as eye-witnesses as, admittedly, they reached the place after the incident and they came to know about the incident through Jeshbhai Shankerbhai, as narrated by him. Mr. Ramakrishnan submitted that even Jeshbhai Shankerbhai can be said to be an eye-witness qua the incident relating to deceased-Gordhanbhai Babubhai because he does not claim to have seen any assault being made on deceased-Shanabhai Babubhai by anyone least the accused.

2.3 Mr. Ramakrishnan contended that Jeshbhai Shankerbhai's version is self-contradictory and does not get support from medical evidence. On the contrary, medical evidence indicates that Jeshbhai could not have witnessed the incident. He submitted that the possibility of Jeshbhai Shankerbhai himself being the culprit cannot be ruled out and Jeshbhai Shankerbhai could have tried to camouflage his act by involving the accused in the incident. He submitted that the day on which the incident is claimed to have occurred was 'Janmashtami' festival and people would not go to work. He submitted that Jeshbhai Shankerbhai does not narrate anything to Babubhai Motibhai or Shanabhai Lallubhai or Revaben regarding the death of Shanabhai Babubhai. He submitted that the accused was injured as it is found from his arrest Panchnama. These injuries are not explained by the prosecution and, therefore, it must prove to be fatal to the prosecution case. The learned Additional Sessions Judge has not considered these

aspects while convicting the accused. He submitted that the conduct of Jeshbhai Shankerbhai is very unnatural and the way he has conducted himself at the time of the incident and subsequent thereto indicates that he could not have witnesses the incident. He submitted that Jeshbhai Shankerbhai is an interested witness as he was in employment of the complainant and the deceased. He, therefore, urged that the appeal may be allowed.

3. The appeal is opposed to by learned Additional Public Prosecutor, Ms. Gajjar. She submitted that the prosecution has been able to bring on record the factum of enmity between the accused and the deceased. The enmity was on account of a land disputed about two Vighas of land. She submitted this provides motive. She stated to the fact that there is no eye-witness to the incident of Shanabhai Babubhai, but the accused and the deceased were seen last together a few minutes prior to the incident. Further, deceased Shanabhai was taken by the accused to the place wherefrom his dead body is found. Regarding the murder of Gordhanbhai, she submitted that Jeshbhai is a direct eye-witness. He has immediately narrated the incident to other witnesses, who have vouched is saying so. She submitted that the witnesses are rustic villagers and they would not know the relative importance of each event and, therefore, may have missed to say one thing or the other. But, by and large, their depositions clearly implicate the accused beyond reasonable doubt. Minor contradictions or exaggerations are found to creep in deposition of natural witnesses and only on that count, deposition could not have been thrown out by the learned Additional Sessions Judge. The learned Additional Sessions Judge was, therefore, right in accepting these depositions and convicting the accused. She submitted that when the accused was arrested, his clothes were blood stained. Blood was of group 'B' whereas the blood group of the accused is 'O' positive and, therefore, this blood group was of the deceased, as can be seen from the F.S.L. report. She submitted that the deposition of eye-witness and other circumstances clearly connect the accused with the offence. The appeal may, therefore, be dismissed.

4. We have been taken through the entire record and proceedings. We find that there is no direct evidence regarding murder of Shanabhai, but there is evidence to indicate that deceased-Shanabhai was taken by the accused to the place wherefrom his dead body was found. Even few minutes after the accused taking deceased-Shanabhai to that field, the accused re-appears at the spot when the incident regarding deceased-Gordhanbhai takes place and

then the accused flees. Soon, thereafter, dead body of Shanabhai is found from the place where the accused had taken him, i.e. near the well. The deposition of doctor, who performed the postmortem, is quite relevant in this regard. Dr. Prabhashankar Ganpatrai Jani (Ex.8) says that he had performed postmortem of the dead body of deceased Shanabhai Parmar on 4.9.1988 between 9.30 A.M. and 12.00 noon. He describes various injuries which are about 11 in number so far as external injuries are concerned and 8 in number so far as internal injuries are concerned. He says that these injuries were possible by spade and were antemortem. According to him, the death of Shanabhai occurred about 18 to 20 hours prior to the postmortem. That would bring the time of death around the time when the incident is alleged to have occurred, i.e. about 2.30 P.M. on 3.9.1998. This indicates that the death has occurred almost immediately after deceased-Shanabhai was taken to the place of incident. Another circumstance that requires to be considered is that, soon thereafter, the accused comes where deceased-Gordhanbhai and witness-Jeshbhai were working and the incident regarding murder of Gordhanbhai takes place, whereafter, the accused flees. It may be noted that the injuries found on person of the deceased-Shanabhai are deposed by Dr. Jani to be possible with muddamal spade, which is discovered at the instance of the accused as having been used in the offence by him. These circumstances complete a chain of circumstances connecting the accused with the offence or murder of deceased-Shanabhai, although there is no direct evidence qua his murder.

5. So far as the second incident is concerned, which is regarding murder of Gordhanbhai Babubhai, it may be noted that there is direct evidence of Jeshbhai Shanabhai (Ex.16), who says that he and deceased Gordhanbhai were working in the field when accused came there, demanded match box, whereupon deceased-Gordhanbhai told him to look for the same at the place where they had earlier sat and, thereafter, the witness heard a 'Thud' sound. When he looked back, he found Gordhanbhai having been fallen to the ground and the accuses standing there with a spade which was blood stained. The deceased was bleeding from his head, whereupon, the witness raised shouts. He was, therefore, threatened/intimated by the accused. The witness, therefore, started running away when he met the other two witnesses, namely, Babubhai Motibhai and Shanabhai Lallubhai, who were rushing to the spot on hearing his shouts. By that time, the accused fees from the spot. Witness-Jeshbhai narrates the incident regarding Gordhanbhai to witness Babubhai Motibhai and

Shanabhai Lallubhai and then goes home. Much criticism was made by Mr. Ramakrishnan regarding this conduct of the witness, i.e. of going home. It may be noted that the witness is a rustic villager coming from agricultural labour class. He was threatened. He has seen a murder being committed before his own eyes and he has narrated the incident to Babubhai Motibhai, who is the father of the deceased and finds that they are to take care of Gordhanbhai and, therefore, goes away. He states that he was shocked and after some time, when he recovered from the shock, he came back. We do not find any unnatural conduct on part of this witness. Besides, what is stated by him in his deposition is corroborated by witnesses-Babubhai Motibhai and Shanabhai Lallubhai.

5.1 We have gone through the deposition of this witness-Jeshbhai Shankerbhai threadbare. He has been subjected to piercing cross-examination, but holds fast to his version. We find that there is a ring of truth in his deposition as, at times, he admits certain things where are not favourable to the prosecution. But, by and large, he sticks to his version about the incident involving the accused with the offence.

6. A defence appears to have been taken regarding unsoundness of mind on part of the accused, which has not been accepted by the learned Trial Judge and, in our opinion, rightly so. This witness further admits in his cross-examination that he had heard about the accused having lost balance of mind two months prior to the incident. But he asserts that it is not true that when the incident occurred, the accused was not sane. He says that he had noticed head injury on person of Gordhan, but had not noticed other injuries. Such things cannot be given undue importance as when a person suddenly finds himself in the midst of such a drastic attack, different persons would react in different manner. It would depend on observation capacity of each individual and simply because a person has not minutely noticed these injuries or because he has not acted in a particular manner, he cannot be disbelieved.

7. We have closely examined the deposition of this witness and find that this witness is quite reliable. The prosecution has rightly been held to have proved the case against the accused by the learned Trial Judge.

8. A contention is raised by learned advocate Mr. Ramakrishnan regarding the prosecution having failed to explain the injury on person of the accused. We do not find any force in this contention for the reason that

there is evidence to indicate that, after the incident, the accused fell into a well and the deposition of Punambhai Prabhadbhai, Panch witness of the Arrest Panchnama states that the accused was injured when he was arrested. Added to the above factors is the fact that the spade used in commission of the offence has been discovered by the accused in presence of Panch witnesses. Panch witness-Gordhabhai Bhikhabhai (Ex.44) clearly deposes to this effect.

9. We have also gone through the impugned judgment and order. We do not find any defect in the reasoning adopted by the learned Additional Sessions Judge or in the conclusions arrived at by him. We agree with his reasoning and conclusions. We, therefore, do not find any ground to allow this appeal. The appeal must, therefore, fail.

10. In the result, the appeal is dismissed. The conviction and sentence of the appellant for the offence of murder of Shanabhai Babubhai and Gordhanbhai Babubhai recorded by the judgment and order dated 3.2.1992 passed by the learned Additional Sessions Judge, Nadiad, in Sessions Case No.132 of 1989 is hereby confirmed.

[M.H. KADRI, J.]

[A.L. DAVE, J.]

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